FILED

961374 FEB 27 1997

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

HERMAN I. and CORA E. SHALLER,
Petitioners,

v.

ARTHUR A. WALKER,

and

LEISURE WORLD COMMUNITY CORPORATION,
LEISURE WORLD OF MARYLAND CORPORATION,
MONTGOMERY MUTUAL, INC.,
ROBERT E. SULLIVAN,
RITA S. RAMSEY, and
RICK PITMAN,
Respondents.

Petition for Writ of Certiorari to the Court of Appeals of Maryland

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PETITION FOR WRIT OF CERTIORARI

HERMAN I. and CORA E. SHALLER,
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51PP

QUESTIONS PRESENTED

1. Whether the Court of Appeals of Maryland deviated from and ignored violations of U.S.C. Title 15—COMMERCE AND TRADE, SUBCHAPTER II—ASBESTOS HAZARD EMERGENCY RESPONSE, and EPA 40 CFR Part 763, the violations of which caused irreparably destructive damages to Petitioners?

2. Whether the Court of Appeals of Maryland deviated from and ignored violations of the NINTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

3. Whether the Court of Appeals of Maryland deviated from and ignored violations of the FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

PARTIES TO THE PROCEEDING AND DESIGNATION OF CORPORATE RELATIONSHIP

Petitioners, Herman I. and Cora E. Shaller are individuals, husband and wife.

Respondents:

Arthur A. Walker is an individual represented by Leisure World of Maryland Corporation as the "current owner" of the shares for cooperative unit #82C in 1993;

Leisure World Community Corporation represents and manages the Leisure World Community known as Leisure World of Maryland, in Montgomery County, Maryland;

Leisure World of Maryland Corporation is the "managing agent" for Leisure World Community Corporation;

Montgomery Mutual, Inc. is a cooperative housing development within the Leisure World of Maryland community;

Robert E. Sullivan is the General Manager for Leisure World of Maryland Corporation;

Rita S. Ramsey is the Property Manager for Montgomery Mutual, Inc.;

Rick Pitman is the designated Coordinator and Inspector for RENOVATION OF RESALE UNITS.

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PETITION FOR WRIT OF CERTIORARI

Herman I. & Cora E. Shaller—Plaintiffs in this case in the Circuit Court for Montgomery County, Maryland, Appellants in the Court of Special Appeals of Maryland—respectfully petition this Court to issue a writ of

certiorari to review the Order of the Court of Appeals of Maryland in Herman I. Shaller et ux. v. Arthur A. Walker, and Herman I. Shaller et ux. v. Leisure World Community Corp. et al., Petition Docket No. 282, September Term, 1996, dated December 11, 1996.

OPINIONS BELOW

The Court of Appeals of Maryland ORDER dated December 11, 1996 as to which review is sought, is in response to Petitioners' Request for Reconsideration of the Petition for a Writ of Certiorari to the Court of Special Appeals Filed November 13, 1996 responding to the Court of Appeals' Order dated November 7, 1996, reprinted in the Appendix to this petition (Pet. App.) as Appendix A, Pet. App. 1a. The unreported decision of the Court of Special Appeals dated June 7, 1996 is reprinted as Appendix B to this petition, Pet. App. 7a. The underlying rulings, decisions, and judgments in the Circuit Court are reprinted as Appendix C to this petition, Pet. App. 15a.

JURISDICTION

The opinion of the Court of Appeals of Maryland was issued on November 7, 1996, Pet. App. 6a. A timely request for reconsideration (Pet. App. 2a) was denied on December 11, 1996, Pet. App. 1a.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257.

STATUTORY PROVISIONS INVOLVED

Section 2614 of U.S.C. Title 15—COMMERCE AND TRADE, states that "It shall be unlawful for any person to fail or refuse to comply with any requirement of subchapter II of this chapter or any rule promulgated or order issued under subchapter II of this chapter.".

Section 2643. EPA regulations for warning labels for schools and public and commercial buildings defined to include apartment complexes, condominiums and cooperatives of more than 10 units requires that "The warning label shall read, in print that is readily visible because of large size or bright color, as follows: "CAUTION: ASBESTOS, HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."

The above label was missing from the front door of Unit 82C in Leisure World of Maryland on April 2, 1993. (Petitioners' Complaint filed 1/3/95, dismissed as to Leisure World by Judge Ryan on 5/31/95, includes a copy of the required EPA label as Exhibit #6 which was missing as noted above).

CONSTITUTIONAL PROVISIONS INVOLVED

Ninth Amendment—Petitioners' rights of personal security and bodily integrity were violated.

Fourteenth Amendment—No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. Facts

Petitioners entered into a RESALE CONTRACT FOR COOPERATIVES at Leisure World in Maryland to purchase shares of stock in accordance with "Proprietary Documents" pertaining to and covering Cooperative Unit 82C. The Contract was signed and ratified on 2/17/93.

One of the proprietary documents, *STANDARDS FOR THE RENOVATION OF RESALE UNITS Effective*

August 1, 1989, is a Unilateral Contract. Leisure World Community Corporation is the Corporate Owner of Unit 82C, and Leisure World of Maryland Corporation is the Renovation Contractor for Unit 82C.

After ratification of the Sales Contract, Petitioners promptly proceeded with an application for co-op membership which was approved on 2/25/93.

Respondent Arthur A. Walker, in an Affidavit dated 2/13/95, states that he spent thirty (30) days (during February and March 1993) removing "personal items" and "carpet" from the co-op unit.

On March 4, 1993, Leisure World Respondent Rita Ramsey informed Petitioner Herman Shaller that renovation of the Unit was currently underway. However, Respondent Walker swears that he was removing "personal items" and "carpet" from the Unit at that time, the same time that renovation of the unit is allegedly underway, and notwithstanding that interference with any renovation currently underway is not permitted under Leisure World's Unilateral Contract.

On March 29, 1993, Petitioners met with the Bank Escrow Clerk who informed Petitioners that the unit was ready for settlement. However, she had not received Leisure World's "Resale Renovation Statement" required for confirmation that the Unit had been Renovated and was ready for Settlement.

At approximately 4:00PM on March 31, 1993, Ms. Ramsey, the Property Manager for Unit 82C called Petitioners at home to inform them that Renovation of the Unit was completed and that she could now schedule the Post-Renovation Inspection required under Leisure World's Unilateral Contract. Accordingly, the inspection was scheduled for 10:00AM on April 2, 1993. Petitioners were told to report to the Office to meet with her and Mr. Pitman, the Renovation Coordinator and Inspector. Mr. Pitman would then drive Petitioners to Unit 82C and

accompany them through the Unit during the inspection, a duty required under Leisure World's Unilateral Contract.

When Petitioners arrived at the Co-op Office on April 2, 1993 at approximately 9:45AM, Ms. Ramsey stated that she had made other arrangements as to Mr. Pitman who was told to meet Petitioners at the Unit. When Petitioners met Mr. Pitman at the Unit, he opened the door and Petitioners followed him into the kitchen at which time he said that he could not stay for the inspection because he had other things to do.

Petitioners were thereby lured into the unit and left alone by Leisure World Respondents although it was their *duty* to accompany Petitioners, and their responsibility to answer questions and to note the renovation deficiencies which would have to be corrected.

Respondent Walker was absent.

Walker's Prudential Real Estate Agent, Michael Williams, who personally called to inform Petitioners that he would accompany them for the scheduled inspection, was absent.

Petitioners were abandoned by all participants scheduled to appear for inspection of the unit on April 2, 1993 at 10:00AM. Each participant, expected, and/or required to do so, failed to arrive to accompany Petitioners without any warning by anyone as to why.

On April 5, 1993, Mr. T.J. Murphy of Prudential, Respondent Walker's Agent, called and told Herman Shaller that the broken floor tiles throughout the house were asbestos tiles and that it would be difficult to replace them.

Mr. Murphy's telephone call on April 5, 1993 illuminated and revealed why no one was willing to participate in the inspection. Petitioners were lured into the unit by Respondents without any warning by anyone as to the existing asbestos hazard and the existing hazardous physi-

cal condition of Unit 82C which was an obstacle course to walk through, notwithstanding Respondents' duty to accompany Petitioners and to note and explain deficiencies which would have to be corrected.

Residents, and people visiting Leisure World in Maryland, including children and grandchildren, have been unsuspecting victims of exposure to asbestos fibers contained in, and/or emanating from, apartment buildings and attached townhouses of the Cooperative Housing Area of Leisure World identified as Montgomery Mutual, Inc.

The cooperative housing area consists of 93 buildings containing 898 residential units and occupies approximately 70 acres.

Petitioners frequently visited Leisure World for approximately ten (10) years and were unsuspecting victims until informed, after the fact, and without prior warning by anyone, that they had been exposed to asbestos fibers. That exposure occurred during inspection of a cooperative townhouse (Unit 82-C) on April 2, 1993. It had been misrepresented as ready for settlement, possession, and occupancy under a Sales Contract with the owner of the cooperative shares of that unit, and under a unilateral Contract with Leisure World of Maryland Corporation, contractor responsible for renovating Unit 82-C.

The information that Petitioners had been exposed to asbestos came from the Real Estate Agent representing the Seller of the shares for Unit 82-C on April 5, 1993.

Subsequent correspondence from the Leisure World Property Manager for Unit 82-C dated April 15, 1993, states that, "the referenced unit contains no asbestos." That statement was false.

A laboratory test was subsequently demanded by Petitioners' Attorney James E. Savitz in correspondence to Ms. Ramsey dated April 20, 1993. Accordingly, a bulk

sample of friable asbestos floor tile, ubiquitous throughout the entire house, except for the kitchen and the bathrooms, was submitted for test by Leisure World in a 35mm film can. The test revealed that Petitioners' exposure to asbestos fibers was approximately seventy (70) times the intensity defined as hazardous under Maryland and Federal law.

2. Proceedings Below

Hearing before Judge Thompson on March 24, 1995.—Judge Thompson's Judgment granting Mr. Walker's motion for summary judgment and Order to reimburse Arthur A. Walker for attorneys fees and costs that he incurred in defending against the litigation of a contract case was an error for the following reasons:

(1) The Complaint was filed as a Tort Action—Not Contract.

(2) The incident complained of occurred on April 2, 1993. In Maryland, the statute of limitations is three (3) years. Therefore, any suit which is filed based upon that incident would have to be filed before April 2, 1996 or the claim may be forever barred. The claim for damages caused as a result of exposure to asbestos was timely filed.

(3) Judge Thompson acknowledged Plaintiffs' exposure to asbestos as equivalent to that of shipyard workers who have not yet become ill, or "we do not know that you are ill" (see Transcript p. 15, lines 24-25, p. 16, line 3, and p. 16, lines 6-7). Judge Thompson also suggested that it would be more appropriate for Plaintiffs to come back to court if and when they get sick (see Transcript p. 10, lines 13-18).

(4) Judge Thompson stated that he was not going to impose sanctions upon Plaintiffs, and then did so by signing the Order drafted by Mr. Walker's attorneys. (see

Transcript p. 26, lines 2-7). The words and conduct of Judge Thompson in this instance is incongruous.

(5) Judge Thompson's assertion that, "You have visited anxiety on a man who has never met you, talked to you or had anything to do with you and you sued him" was without basis. It was an assertion which is false. (See Transcript p. 25, lines 12-14.)

(6) Mr. Walker lied in his Affidavit prepared and used as evidence for which he was granted summary judgment. Mr. Walker knew he was lying when he signed that Affidavit, as did his attorney, Kim Viti when she filed that Affidavit as evidence for which summary judgment was granted.

Hearing before Judge Ryan on May 31, 1995.—Judge Ryan's ruling on May 31, 1995 (Pet. App. 17a) was arbitrary and capricious. He did not cite any violation of any Maryland rules nor did he refer to any corrections required in pleading fraud and deceit and conspiracy, count I and count II in the Amendment of Pleadings filed May 25, 1995 as causes of action for which relief can be granted.

Furthermore, since his ruling applied only to the Leisure World Defendants, it was reasonably assumed that compliance with his ruling would be met by following Rule 2-341—Amendment of Pleadings, i.e., to "set forth a better statement of facts" as to Leisure World Defendants' issues already raised in the Complaint filed Jan. 3, 1995 and the Amendment of Pleadings filed May 25, 1995.

Judge Ryan also cancelled the discovery process period which was to be scheduled on June 2, 1995.

Hearing before Judge Ryan on September 7, 1995.—Judge Ryan's granting Leisure World's motion to dismiss the Amended Complaint With Prejudice and his Award

of Attorneys Fees in the Amount of Two Thousand Dollars Against Both Plaintiffs was an error. (Pet. App. 17a.)

In addition to the reasons and arguments in the record, Judge Ryan was obviously confounded and confused when he stated that "I have read your amended complaint. I have read the motion to dismiss, and I have read your opposition to it, and I have read the defendant's answer and your response.". But the last two (2) documents Judge Ryan claimed to have read with reference to Leisure World's motion to dismiss were imaginary. There was no Defendants' Answer, and there was no Plaintiffs' Response as cited by Judge Ryan (see Transcript p. 10, lines 7-10, and p. 11, lines 8-17).

Judge Ryan did not acknowledge, and did not indicate inclusion of Plaintiffs' Amendment of Pleadings filed on May 25, 1995 nor the Complaint filed January 3, 1995 in his dismissal of the Amended Complaint With Prejudice.

Specifically, Plaintiffs' Amendment of Pleadings filed May 25, 1995 clearly pleads causes of action upon which relief can and should be granted. These are:

Count I—Fraud and Deceit, and

Count II—Conspiracy to Interfere With Plaintiffs' Prospective Advantage of Living in Leisure World.

Hearing before Judge Chapin on August 8, 1996.—Judge Chapin's Judgment and Order filed Aug. 16, 1996, "entered in favor of Defendant Arthur A. Walker and against Plaintiffs, Herman I. Shaller and Cora E. Shaller, jointly and severally, in the amount of $3,797.26 and interest from the date of this Order" was obtained by Fraud and Deceit by Defendant Walker *and* his Attorneys, and the Ex-Parte Irregularity by Judge Chapin which occurred in the Circuit Court while the case was under the jurisdiction of the Court of Appeals of Maryland

pending a decision as to the Petition for a Writ of Certiorari. (Pet. App. 18a-30a.)

The resulting damages included exacerbation of mental anguish, emotional distress, and additional Pecuniary Damages, subsequent to the Injuries and Damages caused by the exposure to asbestos.

The Unreported Conclusions of the Court of Special Appeals

The conclusions of the Court of Special Appeals (Pet. App. 7a) are based upon factual distortions, omissions and lies by the Respondents, and premises which are not true.

The Court's argument that "it is unreasonable for the Shallers to be worried about future asbestos related consequences" is disingenuous.

As to the Court's reference to "any other jurisdiction," and as to Plaintiffs' "Mental Anguish"; in *Shelton v. College Station* (1985, CA5 Tex.) 765 F.2d 456 (applying Texas law), the Court allowed plaintiff to recover for his mental anguish relating to his fear that his exposure to asbestos had increased his risk of developing cancer and mesothelioma in the future. The Court commented that people today are sensitive to the dangers of cancer, and that mental anguish would reasonably follow after the plaintiff was informed by a reliable source that his exposure to asbestos products had heightened his risk of developing deadly diseases.

REASONS FOR GRANTING THE WRIT

Research reveals that "The magnitude of the asbestos problem is staggering in its extent, severity, and societal cost . . . there are clinicians and epidemiologists who now speak of a 'mesothelioma epidemic' and this possiblility casts grave concern on the value of current permissible exposure levels and asbestos control criteria. . . .

There are troubling inferences concerning the health effects of low level asbestos exposures, very low level of cumulative exposures, and brief sporadic exposures relative to human carcinogenesis."

It has also been established that the relationship between asbestos exposure and mesothelioma is one of "cause and effect". (Reference: Current Asbestos Legal, Medical and Technical Research, Volume 10 of the Sourcebook on Asbestos Diseases. Butterworth Legal Publishers, 1994).

Damages are triggered by the initial inhalation of asbestos fibers, and by exposure-in-residence to the fibers, *meaning the continuing damage inflicted upon lung tissue by asbestos fibers that had already been inhaled.*

There can be no ambiguity about public policy consideration in this case pursuant to U.S. Code Title 15-Commerce and Trade, Subchapter II-Asbestos Hazard Emergency Response which also specifies that "It shall be unlawful for any person to fail or refuse to comply with any requirement of subchapter II of this chapter or any rule promulgated or order issued under subchapter II of this chapter".

There is no known minimal dose which is safe for the inhalation of asbestos dust and fibers. Furthermore, there is no effective treatment to reverse or repair the "bodily injury", the effects of which are proximate, prospective, irreparable, and permanent damages which follow as results of the inhalation.

The Court's holding in *Civil Action No. 6:93cv526 in the United States District Court for the Eastern District of Texas, Tyler Division*, "was based upon a finding that 'bodily injury' existed continuously from the moment of first inhalation by a claimant of asbestos fibers to the date of manifestation of injury or filing a claim (whichever comes first)."

The level and density of asbestos dust and fibers in the townhouse (Unit 82C) during April 1993 was seventy (70) times the amount defined as hazardous under Maryland and Federal Law. The exposure on April 2, 1993 was not limited to a two (2) hour period of inhaling seventy (70) times the amount Federal Law and the State of Maryland defines as hazardous; the reprehensible factor here is that Petitioners were lured into the house by acts of fraud and deceit by Respondents acting in concert. Furthermore, Petitioners unknowingly took all the asbestos dust and fibers which had gathered upon them, on their clothes and shoes, in their hair, ears, nose and throat, and which were unknowingly brought home and contaminated their house and everything in it.

It is a matter of record that a mother of two (2) sons died of mesothelioma (lung cancer) notwithstanding that her only exposure to asbestos occurred when she washed the work clothes worn by both sons who were living at home while they worked at a factory where they and their clothes were exposed to asbestos. (Outrageous Misconduct, by Paul Brodeur, Pantheon Books, New York, 1985. The Case of the Tyler Plant, p. 93).

Seventy (70) times the amount of asbestos dust and fibers defined by Federal and Maryland Law as being hazardous (creates a substantial and unreasonable risk of death or personal injury), translates arithmetically into the equivalent of two (2) hours of exposure per day for seventy (70) days or an hour every day for one hundred forty (140) days or almost five (5) months of consecutive daily exposure. This is no "Mere exposure to asbestos, to the minor extent" described by the Court of Special Appeals in its decision, notwithstanding that levels of prior asbestos exposures at Leisure World are not known.

Prior to Petitioners' knowledge that they had been exposed to a high density level of asbestos fibers, Petitioners

considered initiating proceedings to enforce the Sales Contract and to enforce Leisure World's Renovation Contract to satisfactorily renovate the unit.

After Petitioners were informed of the substantial and unreasonable risk of death or personal injury associated with exposure to asbestos, and that they had been visiting Leisure World for approximately ten (10) years prior to the unlawful exposure in Unit 82C on April 2, 1993 which Respondents had concealed, Petitioners had no choice but to struggle with the reality of the irreparable damage already caused, and that Respondent Walker and Leisure World Respondents were deceitful and could not be trusted.

Accordingly, Petitioners were advised by their Attorney, James E. Savitz to release Prudential Preferred Properties and Jeanette Walker from the Sales Contract as of April 30, 1993. However, Respondent Arthur A. Walker was not released from the TORT he committed in concert with Leisure World Respondents, independent of that contract. Furthermore, his own statements of his activity, and the fraud he revealed, in his Affidavit of 2/13/95, for the period 2/17/93 to 4/30/93, had been concealed by him and Leisure World Respondents until he filed his Affidavit in the Circuit Court for Montgomery County, Maryland on 2/16/95. If he maintains his claim as that of an agent for a principal, the principal is not responsible for his or her agent when the agent goes off on a lark of his own.

The indisputable fact is that Petitioners were exposed to high levels of asbestos fibers.

This exposure was the result of negligence, willful misconduct, and fraud and deceit on the part of Respondents.

Respondents' attempts to conceal the exposure were revealed by definitive laboratory analysis which proved the high level of unlawful asbestos exposure.

Respondents violated Petitioners' right to the enjoyment of health by causing irreparable damage to their health.

The right to the enjoyment of health is a subdivision of the right to personal security, one of the absolute rights of persons.

Prior to their exposure to asbestos at Leisure World, Petitioners were in excellent health and excellent physical condition.

A continuous deterioration of health and endurance of both Petitioners began shortly after the exposure on April 2, 1993.

The deterioration of health and endurance experienced by Petitioner Cora Shaller has been particularly devastating. Her good health and endurance which existed prior to her exposure has been severely and irreparably damaged and includes medical diagnoses of Exertional Dyspnea, Fatigue, Hypertension, Lymphadenopathy, and a Pulmonary Problem which "is consistent with disease at the gas exchange membrane".

On January 10, 1997, the condition of Petitioner Cora Shaller required hospitalization.

Cora Shaller's pulmonary problem and other manifestation of diseases following the exposure were ignored because, according to Judge Ryan, "This is not the trial of the case".

Personal injuries and damages following the exposure are recoverable under Maryland and Federal Law. However, Due Process of Law was denied in the Maryland Courts.

The damage to Petitioners caused by Respondents in this case was no accident. The damage was caused by a set of events and circumstances carefully orchestrated by Leisure World Respondents acting in concert with Respondent Walker to conceal and insure that Petitioners would never know that they had been exposed to asbestos during their inspection. Their conduct and operations was an organized conspiracy engaged in unlawful activities

which caused Petitioners' loss of their good health and their money.

The Respondents in this case must be held accountable for the damages caused by them.

The Decisions and Judgments in the Maryland Courts in this case are in conflict with and contrary to United States Law and Public Policy.

Petitioners' right to recover for damages caused by Respondents under Tort Law has been violated.

DUE PROCESS OF LAW HAS BEEN DENIED.

CONCLUSION

For the reasons stated above, this petition for a writ of certiorari should be granted,

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 282

HERMAN I. SHALLER *et ux.*

v.

ARTHUR WALKER

HERMAN I. SHALLER *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

September Term, 1996
(Nos. 707 and 1597, September Term, 1995,
Court of Special Appeals)

ORDER

The Court having considered the motion for reconsideration in the above-entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, DENIED.

/s/ Robert M. Bell
Chief Judge

Date: Dec. 11, 1996

[Filed Nov. 13, 1996]

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 282

HERMAN I. SHALLER *et ux.*

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HERMAN I. SHALLER *et ux.*

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LEISURE WORLD COMMUNITY CORP. *et al.*

September Term, 1996
(Nos. 707 and 1597, September Term, 1995,
Court of Special Appeals)

REQUEST FOR RECONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS

The ORDER denying the petition for certiorari because "there has been no showing that review by certiorari is desirable and in the public interest" is puzzling for the following reasons:

(1) With regard to the issue of "desirable" raised by the Court, the petition shows violations of Law by Defendants and describes injuries and proximate damages caused as a result of the violations by the Defendants. The Defendants are therefore liable. These violations of law and resulting damages under Maryland and Federal Law must not remain concealed and "UNREPORTED" without a trial by jury on the merits as demanded by Due Process Of Law.

(2) As to the issue of "public interest", the petition states that "the decisions by the Circuit Court and the Court of Special Appeals are in conflict with and contrary to public policy in Maryland". It also cites Maryland's Legislative Policy based upon the finding by the General Assembly "That exposure to asbestos, a known carcinogenic agent, creates a significant hazard to the health of the people of this State". This finding is consistent with the U.S. Code Title 15—COMMERCE AND TRADE, Subchapter II—ASBESTOS HAZARD EMERGENCY RESPONSE which also specifies that "It shall be unlawful for any person to fail or refuse to comply with any requirement of subchapter II of this chapter or any rule promulgated or order issued under subchapter II of this chapter".

The cooperative housing area in Leisure World occupies approximately 70 acres and consists of 93 buildings containing 898 residential units.

Exposure to asbestos fibers at Leisure World by residents and visitors, including children and grandchildren, for the past 25 years from apartment buildings and rows of attached townhouses of the Cooperative Housing Area, is a well recognized health hazard causing personal injuries for which TORT remedies are available under Maryland and Federal Law.

For example, it was an obstruction of justice by Defendants, when Petitioner's request to hire a Maryland

licensed laboratory to take air samples and measure the density of air-borne asbestos fibers circulating in Unit 82C *during April 1993* and also measure the density of asbestos fibers in the surrounding outside air was denied, notwithstanding the fact that Petitioner had offered to pay for those tests at that time.

Furthermore, the record in this case includes a letter from Robert E. Sullivan, General Manager of Leisure World of Maryland Corporation dated *November 16, 1993* to the Executive Director, Montgomery County Office of Consumer Affairs, wherein he states, with reference to the purchase of Unit 82-C, as follows: "Due to the fact that Chrysotile is harmless in its present state and the current owner, Mr. Walker, has installed new carpet and padding over the tiles making them less harmless, we did not write a disclosure statement concerning the tile to the present contingent contract holder. If disclosure of the information is a County, State, or Federal requirement, please advise."

QUESTION:—Since approximately 75% of the asbestos tiles throughout the Unit (first and second floors) were in friable condition ranging from cracked to broken into pieces which varied in size from large to small, and included piles of dust around the carpet pin holders throughout the house, upstairs and downstairs *during April 1993,* WHICH TILES WERE THE NEW CARPET AND PADDING INSTALLED OVER *after April 1993 and prior to November 16, 1993*?

CONCLUSION

For the foregoing reasons, Petitioners respectfully request reconsideration, and that the Petition for a writ of certiorari to the Court of Special Appeals be granted for the reasons cited and argued in the petition.

Respectfully submitted,

/s/ Herman I. Shaller
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IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 282

HERMAN I. SHALLER *et ux.*

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LEISURE WORLD COMMUNITY CORP. *et al.*

September Term, 1996
(Nos. 707 and 1597, September Term 1995,
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the motion to stay filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and motion to stay be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

Date: November 7, 1996

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 707

September Term, 1995

HERMAN I. SHALLER, *et ux.*

v.

ARTHUR WALKER

No. 1597

September Term, 1995

HERMAN I. SHALLER, *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

WILNER, C. J.,
FISCHER,
MURPHY,

JJ.

Per Curiam

Filed: June 7, 1996

This consolidated case involves Herman and Cora Shaller's (Shallers) appeal from two separate orders issued by two judges in the Circuit Court for Montgomery County. In the first order, Judge Thompson granted Arthur A. Walker's Motion for Summary Judgment. In the second order, Judge Ryan granted Leisure World Community Corporation, Leisure World of Maryland Corporation, Montgomery Mutual Inc., Robert E. Sullivan, Rita S. Ramsey, and Rick Pitman's (Leisure World) Motion to Dismiss the Shallers' amended complaint. The Shallers sued Mr. Walker, Leisure World, and Prudential Preferred Properties [1] for, *inter alia,* damages allegedly caused by: (1) exposure to asbestos; and (2) interference with a contractual relationship. The Shallers present several questions for our review, which we have combined and reworded as follows:

I. Did Judge Thompson err by granting Mr. Walker's motion for summary judgment?

II. Did Judge Ryan err by granting Leisure World's motion to dismiss?

FACTS

The Shallers wanted to buy a cooperative unit (the townhouse) located at Leisure World and owned by Mr. Walker's mother, Jeannette Walker. Mr. Walker, who had power of attorney over Mrs. Walker's assets, entered into a listing agreement with Prudential in order to sell the townhouse. On or about February 12, 1993, Mr. Walker signed the sales contract for the townhouse with the Shallers.

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[1] Prudential is not a party to this appeal.

On April 2, 1993, the Shallers conducted an inspection of the townhouse without the assistance of anyone from Leisure World or Prudential. They spent two hours inspecting the townhouse and made a list of the items that they wanted repaired. One of these items included repairs to tiles in the foyer.

Prudential later informed the Shallers that they could not repair the "vinyl asbestos tiles" that were in the foyer. Subsequently, the Shallers had the tiles tested for asbestos and these tests revealed the presence of "chrysotile asbestos." After receiving the information about the presence of asbestos in the townhouse, the Shallers declared their sales contract with Mr. Walker null and void.

The Shallers sued Leisure World and Mr. Walker for: (1) "Fraud and Deceit;" (2) "Conspiracy to Interfere with Plaintiffs Prospective Advantage of Living in Leisure World;" (3) "Gross Negligence;" (4) "Fraudulent Misrepresentation;" (5) "Reckless Abuse;" and (6) "Wrongful Breach of Contract." On March 27, 1995, Judge Thompson granted Mr. Walker's motion for summary judgment and ordered the Shallers to pay Mr. Walker's attorneys' fees.

On May 31, 1995, Judge Ryan granted Leisure World's motion to dismiss the Shallers' complaint. Judge Ryan, however, gave the Shallers thirty days to amend their complaint. The Shallers filed an amended complaint that included only two causes of action: (1) "Interference with Contractual Relationship;" and (2) "Unlawful Exposure to Friable Asbestos." After a hearing, Judge Ryan granted Leisure World's motion to dismiss the Shallers' amended complaint with prejudice. Judge Ryan also ordered the Shallers to pay Leisure World $2,000 in attorneys' fees. The Shallers filed a timely appeal with this Court to challenge both Judge Thompson's and Judge Ryan's orders. Subsequently, the Shallers' two requests for appellate review were consolidated.

DISCUSSION

I. Judge Thompson's Order

In their brief, the Shallers did not discuss Judge Thompson's finding that Walker could not be sued because he was acting under the power of attorney for Mrs. Walker. Instead, the Shallers presented a series of pseudo-legal cavils that they believe support their position that Judge Thompson erred in granting Mr. Walker's summary judgment motion.

An agent for a disclosed principal is not liable for the purported acts of the principal the agent represents. *A.S. Abell Co. v. Skeen*, 265 Md. 53, 56 (1972). An attorney who does work for a client under the power of attorney is considered an agent of that principal-client. *King v. Bankerd*, 303 Md. 98, 105 (1985). Accordingly, attorneys acting under a power of attorney are not liable in suits based on defects in the property of the principal for whom the attorney is acting.

In this case, Mr. Walker had a power of attorney over Mrs. Walker's assets and signed the sales contract for Mrs. Walker pursuant to his power of attorney. That agency relationship between Mr. Walker and his mother was fully disclosed to the Shallers. Mr. Walker even signed the sales contract as "POA for Jeannette Walker." Thus, because Mr. Walker and his mother had a principal-agent relationship with respect to the townhouse and that relationship was disclosed to the Shallers, Walker was not liable for alleged damages caused by the Shallers' exposure to asbestos.

II. Judge Ryan's Order

The Shallers argue that Leisure World (1) intentionally interfered with the contract between Mr. Walker and the Shallers; and (2) is liable for alleged injuries incurred by the Shallers when they were exposed to asbes-

tos fibers during their two-hour inspection of the townhouse. Leisure World counters that the Shallers failed to prove the elements for intentional interference with a contract and intentional infliction of emotional distress.

If it is to withstand a motion to dismiss, a complaint must contain sufficient facts which, if taken as true, would entitle the plaintiff to relief. *See Davis v. DiPino,* 337 Md. 642, 648 (1995). If the complaint does not contain sufficient facts to prove a cause of action, the complaint must be dismissed. Thus, in the case *sub judice,* our focus is whether the Shallers' amended complaint contains sufficient factual allegations which, if taken as true, would entitle them to relief.

A. Interference with a Contract

A complaint for intentional interference with a contract must allege that a "third party, without justification and for an unlawful purpose, intentionally interfered with the business relationship between the plaintiff and another, causing the plaintiff actual damage." *Bleich v. Florence Crittenton Servs. of Baltimore, Inc.,* 98 Md. App. 123, 146-147 (1993) (emphasis omitted). In this case, the facts alleged in the Shallers' amended complaint did not establish an intentional interference with a contract. The Shallers failed to allege that Leisure World intentionally and improperly interfered with the performance of the sales contract or facts that would demonstrate such interference. Additionally, the Shallers failed to allege that Leisure World acted maliciously, or with the intent to damage the Shallers.

B. Exposure to Asbestos

The Shallers argue that "the Tort of asbestos exposure by Leisure World Defendants . . . was an Intentional Tort resulting in Mental Anguish." Neither Maryland nor any other jurisdiction to our knowledge recognizes the tort of

"asbestos exposure." Thus, we will limit our discussion to the Shallers' claim of intentional infliction of emotional distress, which is the only tort listed in count two of the amended complaint.

In order to establish a claim of intentional infliction of emotional distress a plaintiff must, *inter alia,* demonstrate either a severely disabling emotional response or a physical injury. *Harris v. Jones,* 281 Md. 560, 570 (1977).[2] The Court of Appeals elaborated on this requirement as follows:

> Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. *It is only where it is extreme that the liability arises. . . . The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.*

Id. at 570-571 (quoting *Restatement (Second) on Torts* § 46, cmt. j (1965)) (emphasis added). The Court of Appeals went on to warn that:

> . . . [N]ot . . . every emotional upset should constitute the basis of an action. Indiscriminate allowance

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[2] To establish a claim for intentional infliction of emotional distress, a complaint must state that "(1) that conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe." *Caldor v. Bowden,* 330 Md. 632, 642 (1993) (quoting *Harris v. Jones,* 281 Md. 560, 566 (1977)).

> of actions for mental anguish would encourage neurotic overreactions to trivial hurts, and the law should aim to toughen the psyche of the citizen rather than pamper it.

Id. at 571 (quoting *Knierim v. Izzo,* 22 Ill. 2d 73 (1961)).

In this case, the Shallers failed to allege that they had at any time experienced severe emotional distress. The amended complaint only states that the Shallers suffer from "mental anguish" and "painful . . . physical symptoms." Thus, the Shallers' amended complaint does not provide the requisite detailed indicia of severe distress that, if taken as true, would entitle them to relief.

Additionally, a plaintiff's severe emotional distress must be "reasonable and justified under the circumstances, and there is no liability where the plaintiff has suffered exaggerated and unreasonable emotional distress. . . ." *Id.* at 571 (quoting *Restatement (Second) of Torts* § 46, cmt. j); *see also Pierce v. Johns-Manville Sales Corp.,* 296 Md. 656, 666 (1983) (stating that "[i]n Maryland, recovery of damages based on future consequence of an injury may be had only if such consequences are reasonably probable or reasonably certain"); *cf. Faya v. Almaraz,* 329 Md. 435 (1993) (finding that a plaintiff's claim of emotional distress, due to a surgeon not telling the plaintiff he had AIDS before operating on the plaintiff, was reasonable).

In this case, based on the case law and scientific understanding of asbestos, it is unreasonable for the Shallers to be worried about future asbestos related consequences. Mere exposure to asbestos, to the minor extent described here, is not enough to substantiate a claim for mental distress. Simply put, the Shallers' amended com-

plaint is devoid of any facts that would support their claim.[3]

III.

Maryland Rule 1-341 states:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party . . . to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

With respect to the circuit court judges' awards of attorneys' fees, it is enough to say that we cannot imagine a case where the award of attorneys' fees was more justified and supported by the record.

For the aforegoing reasons, the decisions of the circuit court are affirmed.

JUDGEMENTS AFFIRMED.
APPELLANTS TO PAY COSTS.

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[3] It would be more reasonable for Mr. Walker or the parties at Leisure World to claim emotional distress due to the Shallers' intentional and reckless efforts in this case than it would for the Shallers to claim emotional distress because of their exposure.

APPENDIX C

[Filed Mar. 27, 1995]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER
9501 Avenel Road,
Silver Spring, Maryland 20903,
Plaintiffs,

v.

ARTHUR A. WALKER,
3608 Sundown Farms Way,
Olney, Maryland 20832

and

THE PRUDENTIAL PREFERRED PROPERTIES,
10801 Lockwood Drive,
Silver Spring, Maryland 20901

and

LEISURE WORLD COMMUNITY CORP., LEISURE WORLD OF MARYLAND CORP., MONTGOMERY MUTUAL, INC., ROBERT E. SULLIVAN, RITA S. RAMSEY, RICK PITMAN, 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906,

Defendants.

ORDER

Upon consideration of the Arthur A. Walker's Motion for Summary Judgment and the Opposition, if any,

thereto, it is this 24th day of March, 1995, by the Circuit Court for Montgomery County, Maryland;

ORDERED, that Arthur A. Walker's Motion for Summary Judgment be, and is hereby, granted; and it is further

ORDERED, that judgment be, and is hereby, entered in favor of Arthur A. Walker; and it is further

ORDERED, that Herman I. and Cora E. Shaller reimburse Arthur A. Walker for attorneys fees and costs that he has incurred in defending against this litigation.

/s/ Durke G. Thompson
Judge, Circuit Court for
Montgomery County, Maryland

Civil Information for Case #130984

HERMAN I. SHALLER

vs.

ARTHUR A. WALKER

DOCKET INFORMATION

05/31/95 #42 DA 06/02/95

HEARING ON DEFENDANTS', LEISURE WORLD COMMUNITY CORPORATION, LEISURE WORLD OF MARYLAND CORPORATION, MONTGOMERY MUTUAL INC., ROBERT E. SULLIVAN, RITA S. RAMSEY AND RICK PITMAN'S MOTION TO DISMISS THE COMPLAINT (#15) (RYAN, J.) GRANTED WITH THIRTY (30) DAYS LEAVE TO AMEND. TAPE 5-31-95-15-266.8-301.0
JUDGE: J RYAN
TYPE: RULING STATUS: GRANTED
MOTION: 15 OPPOSITION: 17
TAPE #: 15-053195 START #: 266.8
STOP #: 301.0 # TAPES: 1
NO ORDER WAS ISSUED

09/07/95 #55 DD 09/12/95

HEARING ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT (#49) (RYAN, J.) GRANTED WITH PREJUDICE; COURT FURTHER AWARDS ATTORNEYS FEES IN THE AMOUNT OF TWO THOUSAND ($2,000.00) DOLLARS AGAINST BOTH PLAINTIFFS.
JUDGE: J RYAN
TYPE: DOCKET
TAPE #: 15-090795 START #: 294.0
STOP #: 346.3 # TAPES: 1
NO ORDER WAS ISSUED

[Filed Jul. 9, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER TO SHOW CAUSE

Upon consideration of defendant Arthur A. Walker's Motion for Order to Find Plaintiffs, Herman I. and Cora E. Shaller in Contempt of Court and any Opposition thereto, it is this 9th day of July, 1996, by the Circuit Court for Montgomery County, Maryland;

ORDERED, that plaintiffs Herman I. and Cora E. Shaller shall appear before this Court on the 8th day of August, 1996 at 10:00 a.m. for ½ hour to show why they should not be held in Contempt of Court for failure to comply with the Court's Order of March 24, 1995; and it is further

ORDERED, that defendant Arthur A. Walker serve a copy of this order upon plaintiffs, Herman I. and Cora E. Shaller, no later than the 29th day of July, 1996.

/s/ Ann A. Harrington
Judge, Circuit Court for
Montgomery County, Maryland

[Filed Jul. 29, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER,
Defendant.

REPORT TO THE COURT PERTINENT TO ORDER TO SHOW CAUSE

Submitted herewith for the record, pertinent to the Order that Plaintiffs appear before this Court on the 8th day of August, 1996, are Plaintiffs' notes of their 911 call for help on the night of July 22, 1996.

It was after 9:30 PM on 7/22/96 (Monday), that a relentless knocking on my front door and simultaneously, a continuous ringing of my door bell began.

After about 15 minutes, my wife and I became *terrorized and terrified*, so I dialed 911 and requested that a police patrol car be dispatched to our house.

The persistent knocking and door bell ringing did not stop, so I dialed 911 again and was assured that a patrol car was on its way.

While I was still on the phone with the dispatcher, my wife who was looking out of the window told me that the lights of the car just went on and that the car made a fast U turn speeding away.

Within seconds later, the police patrol car came to our house.

I opened my front door and met the officer, told him what had happened, and that he had just missed the car which prompted my call for help.

On 7/23/96 (Tuesday) at about 4:30 PM, my wife answered the telephone and told me to get on the line.

It was a call from "Gail" who identified herself as working for the Circuit Court and told us that she had some papers to deliver to us from the Court; that they were documents which the Court had already mailed to us. When I told her that we had not received any documents from the Circuit Court recently, she said that those which she has to deliver to us were those that "count". She then said that she could deliver the papers that evening and I agreed to have her come to the house no later than 6:30 PM.

She arrived at about 6:20 PM. I met her on my front porch and noticed that the car she came in had a driver and looked like the same car that was parked in the same spot the night before.

When she gave me the Court's ORDER TO SHOW CAUSE, and I saw that Defendant Arthur A. Walker was ORDERED by the Court to serve a copy of this order upon Plaintiffs, I asked her if anyone tried to deliver these papers last night, she said "yes".

When I asked her for her identification she showed me her driver's license.

When I asked her for her identification as working for the Circuit Court she said that she was a process server delivering the papers for the Court.

She did not respond when I asked why I was not notified that someone was coming to deliver the papers yesterday like she did today?

Given the Court's Order that Defendant Arthur A. Walker serve a copy upon Plaintiffs, what was Mr.

Walker's role in the act of terrorism and terrifying us at night on 7/22/96, necessating the 911 call for help?

Who was the person or persons knocking on our door, and, who was the driver of the car at 10 PM on 7/22/96.

Respectfully submitted,

/s/ Herman I. Shaller
HERMAN I. SHALLER, Plaintiff
9501 Avenel Road
Silver Spring, MD 20903
(301) 434-8106

[Filed Jul. 6, 1995]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Civil No. 130984

HERMAN I. SHALLER *et al.*,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER

Upon consideration of Herman I. Shaller's Motion pursuant to Rule 2-632(e), and any opposition thereto, it is this ——— day of ——— 1995, by the Circuit Court for Montgomery County, Maryland.

ORDERED, that enforcement of the Judgment filed on 3/27/95 is hereby stayed during pendancy of the Appeal in the Court of Special Appeals.

DENIED—Appeal is premature—No Amount Has been entered or awarded Against Plaintiff.
July 5, 1995

/s/ William M. Cave
Judge
Circuit Court for
Montgomery County, Maryland

[Filed Aug. 16, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER

Upon consideration of defendant Arthur A. Walker's Motion for Order to Find Plaintiffs, Herman I. Shaller and Cora E. Shaller, in Contempt of Court, the Opposition thereto, and arguments and testimony presented at the hearing, it is this 9th day of August, 1996, by the Circuit Court for Montgomery County, Maryland;

ORDERED, that defendant Arthur A. Walker's Motion for Order to Find Plaintiffs, Herman I. Shaller and Cora E. Shaller, in Contempt of Court is DENIED; and it is further

ORDERED, that judgment be, and is hereby, entered pursuant to the Court's Order dated March 24, 1995 and filed on March 27, 1995 ordering Plaintiffs Herman I. Shaller and Cora E. Shaller to reimburse Defendant Arthur A. Walker for attorneys fees and costs that he incurred in defending the above-captioned litigation; and it is further

ORDERED, that judgment be, and is hereby, entered in favor of Defendant Arthur A. Walker and against

Plaintiffs, Herman I. Shaller and Cora E. Shaller, jointly and severally, in the amount of $3,797.26 and interest from the date of this Order.

/s/ James C. Chapin
THE HONORABLE
JAMES C. CHAPIN
Judge, Circuit Court for
Montgomery County, Maryland

[Received Sep. 18, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. and CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER,
Defendant.

PLAINTIFFS' RESPONSE TO DEFENDANT ARTHUR A. WALKER'S OPPOSITION TO PLAINTIFFS' MOTION FOR THE COURT TO EXERCISE REVISORY POWER AND CONTROL OVER THE JUDGMENT OF JUDGE JAMES C. CHAPIN

Pursuant to Rule 2-535, Judge James C. Chapin's Judgment sought to be vacated was obtained as the result of fraud and irregularity under this rule as presented and argued in Plaintiffs' Motion filed in this Court on August 22, 1996.

Responding now to Defendant Walker's Opposition to Plaintiffs' Motion and with specific reference to Ms. Viti's Ex-Parte meeting with Judge Chapin prior to the hearing on 8/8/96, which was improper, Defendant Walker's argument that there is no basis in fact, and no support in the record of that meeting, is in direct conflict with and contrary to Ms. Viti's statement at the Hearing on 8/8/96, when she responded to a question by Judge Chapin as follows:

> "Yes, Your Honor, and I would also reiterate, specifically based on our discussions yesterday, that the order (referring to Judge Thompson's ORDER) says the costs and fees incurred."

Defendant Walker was not present at the Hearing.

Respectfully submitted,

/s/ Herman I. Shaller
HERMAN I. SHALLER, Plaintiff
9501 Avenel Road
Silver Spring, MD 20903
(301) 434-8106

[Filed Oct. 3, 1996]

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Case. No. 130984

HERMAN I. AND CORA E. SHALLER,
Plaintiffs,

v.

ARTHUR A. WALKER, *et al.*,
Defendants.

ORDER

Upon consideration of Plaintiffs', Herman I. and Cora E. Shaller's, Motion for the Court to Exercise Revisory Power and Control over the Judgment of Judge James C. Chapin entered on August 9, 1996 (Docket #76) and Defendant Arthur A. Walker's Opposition thereto, it is this 30th day of September, 1996, by the Circuit Court for Montgomery County, Maryland.

ORDERED, that Herman I. and Cora E. Shaller's, Motion for the Court to Exercise Revisory Power and Control over the Judgment of Judge James C. Chapin entered on August 8, 1996 (Docket #76) is hereby denied;

/s/ James C. Chapin
Judge, Circuit Court for
Montgomery County, Maryland
Respectfully submitted,

[Filed Oct. 11, 1996]

IN THE COURT OF APPEALS
OF MARYLAND

PETITION DOCKET

No. 282 September Term, 1996

HERMAN I. SHALLER *et ux.*

v.

ARTHUR WALKER

and

HERMAN I. SHALLER *et ux.*

v.

LEISURE WORLD COMMUNITY CORP. *et al.*

This pertains to Petitioners' filing in this Court on Aug. 22, 1996 copies of documents initiated by Defendant Arthur A. Walker in the Circuit Court after Petitioners filed their Petition for Certiorari on July 1, 1996.

The documents filed were

(1) Transcript of a Hearing in the Circuit Court on August 8, 1996, and

(2) Plaintiffs' MOTION FOR THE COURT TO EXERCISE REVISORY POWER AND CONTROL OVER THE JUDGMENT OF JUDGE JAMES C. CHAPIN ENTERED ON 8/09/96 —DOCKET #76.

Judge Chapin's Judgment was sought to be vacated, pursuant to Rule 2-535(b), because it was obtained as the result of fraud and irregularity as alleged and argued in Plaintiffs' Motion with Exhibits 1-9.

Petitioners now respectfully submit copies of additional documents relevant to the above proceedings filed in the Circuit Court and attached herewith as Enclosures 1-5 as follows:

1. Judge Chapin's ORDER filed Aug. 16, 1996. [Pet. App. 23a.]

2. SUPERSEDEAS BOND IN THE AMOUNT OF $4,176.98 was approved and filed Aug. 28, 1996.

3. Defendant Arthur A. Walker's Opposition To Plaintiffs' Motion filed on or about Sept. 16, 1996.

4. Plaintiffs' Response To Defendant Walker's Opposition To Plaintiffs' Motion filed Sept. 18, 1996. [Pet. App. 25a.]

5. ORDER signed by Judge Chapin filed Oct. 3, 1996. [Pet. App. 27a.]

WHEREAS, Judge Chapin's Judgment (Enclosure 1), entered in favor of Defendant Arthur A. Walker and against Plaintiffs in the amount of $3,797.26 and interest, was obtained as the result of fraud by Defendant Walker and his Attorney Kim Viti, and irregularity by Judge Chapin, and

WHEREAS, Judge Chapin's ORDER (Enclosure 5) failed to acknowledge and indicate consideration to Plaintiffs' Response (Enclosure 4) to Defendant Walker's Opposition To Plaintiffs' Motion (Enclosure 3); whereby, Enclosure 4, which refers to Judge Chapin's Ex-Parte meeting with Ms. Viti prior to the Hearing, is a MATTER OF RECORD acknowledged at the Hearing by Ms. Viti, is discriminatory because Plaintiffs were denied equal opportunity to make arrangements to call witnesses to testify

under oath and to submit evidence as was arranged and agreed to between Judge Chapin and Ms. Viti and concealed from Plaintiffs until revealed at the Hearing.

THEREFORE, Petitioners respectfully note on appeal of the foregoing to this Court which has Jurisdiction of this appeal at this time to vacate the Judgment of Judge James C. Chapin entered on August 8, 1996 (Circuit Court Docket #76).

Respectfully submitted,

/s/ Herman I. Shaller
HERMAN I. SHALLER, Petitioner
for Both Petitioners
9501 Avenel Road
Silver Spring, MD 20903
(301) 434-8106